

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RAINIEL JOSH ROBBINS, a.k.a. RANIEL
ROBBINS, a.k.a. TOMAS COSME
15959 E. 14th Street, SPC 1
San Leandro, CA 94578

Case No. 2012-262

OAH No. 2011120419

Registered Nurse License No. 516388

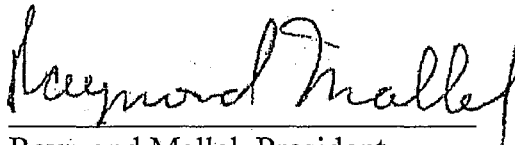
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 20, 2012.

IT IS SO ORDERED this 21th day of August, 2012.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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RAINIEL JOSH ROBBINS, AKA
RANIEL ROBBINS, AKA TOMAS
COSME,

Registered Nurse License No. 516388,

Respondent.

Case No. 2012-262

OAH No. 2011120419

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on June 6, 2012, in Oakland, California.

Deputy Attorney General Joshua A. Room represented complainant Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing.

David W. Washington, Attorney at Law, represented respondent Rainiel Josh Robbins, who was present except for the commencement of the hearing.

The record was closed and the matter was submitted for decision on June 6, 2012.

FACTUAL FINDINGS

1. The Board of Registered Nursing issued registered nurse license number 516388 to respondent Rainiel Josh Robbins (who was then known as Tomas Cosme) on October 3, 1995.¹ The license expired on May 31, 2011, and has not been renewed.

2. On April 15, 2011, respondent was convicted in the Superior Court of California, County of Alameda, on a jury verdict finding him guilty of a misdemeanor violation of Penal Code section 242 (battery). Imposition of sentence was suspended, and

¹ Respondent is also known as Raniel Robbins.

respondent was placed on probation for three years. As terms and conditions of probation, the court ordered respondent to: serve 60 days in jail; pay \$500 in fines (\$100 of which was stayed); pay \$445 in restitution to the victim; stay away from the victim pursuant to a protective order issued per Penal Code section 136.2; not practice as a nurse while on probation; and not volunteer in any care or medical facility.

3. The offense took place on March 27, 2009, while respondent was on duty as a registered nurse at Washington Hospital. The victim was respondent's patient in the hospital, and had been admitted that day for observation following a transient ischemic attack. The victim reported, and apparently testified, that respondent had committed a sexual act on him for sexual gratification while performing a sponge bath, but the jury found differently and acquitted respondent of the charge of violating Penal Code section 243, subdivision (d).

The jury did find that respondent had committed a criminal battery on the patient. As defined by Penal Code section 242: "A battery is any willful and unlawful use of force or violence upon the person of another." Respondent denies committing any inappropriate conduct, stating only that he conducted his normal nursing duties, including checking the patient's vital signs. Respondent believes that the victim had a financial motive to fabricate the charge against him. The jury necessarily did not believe respondent's version of events, for to convict him of battery, it must have found that respondent's touching was unprivileged. (*People v. Rocha* (1971) 1 Cal.3d 893, 899.) In other words, the jury necessarily found that respondent's conduct went beyond performing routine nursing duties.

4. Complainant alleges as a matter pertaining to level of discipline that respondent committed misconduct with juveniles while performing intake screenings as a per diem nurse at Alameda County Juvenile Hall in December 2008. Respondent's employment was terminated, and the matter was reported to the Alameda County Sheriff's Department and the board, each of whom conducted an investigation. No criminal charges or disciplinary action were brought against respondent.

The specific conduct alleged to have been committed by respondent was not established by competent evidence. The only evidence of misconduct was hearsay statements of the alleged victims, which were not corroborative of any direct evidence of misconduct. Respondent denies committing any misconduct with the juveniles.

5. Respondent is 53 years old. He attended nursing school at Our Lady of Fatima College School of Nursing in Quezon City in the Philippines. He has not worked as nurse since his license was suspended by the court on December 2, 2009.

Cost Recovery

6. The actual costs of investigation and prosecution in this matter are \$4,647.50. This represents charges from the Department of Justice of \$4,377.50 for 25.75 hours of

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attorney time, and \$270 for 2.25 hours of paralegal time as of June 1, 2012. The tasks undertaken and the amount of time spent per task were set forth in a billing summary. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

7. On June 1, 2012, the Deputy Attorney General gave a good faith estimate that the board would be billed an additional \$850 for 5 hours of further preparation of the case up to hearing. No evidence was presented with respect to what tasks were expected to be performed in that additional 5 hours. No evidence was presented to explain why the actual cost information was not available by the time of hearing. These additional costs are not found to be reasonable.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty.

2. The expiration of the license does not deprive the board of jurisdiction to discipline the license. (Bus. & Prof. Code, § 2764.)

First Cause for Discipline – Conviction of a Substantially Related Offense

3. Pursuant to Business and Professions Code sections 490 and 2761,² subdivision (f), the board may take disciplinary action against a licensee who has been convicted of an offense that is substantially related to the qualifications, functions or duties of a registered nurse. Any assaultive or abusive conduct, including a battery as defined by Penal Code section 242, is substantially related to the qualifications, functions or duties of a registered nurse. (Cal. Code Regs., tit. 16, § 1444, subd. (a); Pen. Code, § 11160, subd. (d) [assaultive or abusive conduct includes a battery in violation of Penal Code section 242].) Cause for disciplinary action pursuant to sections 490 and 2761, subdivision (f), exists by reason of respondent's battery conviction, as set forth in Finding 2.

Second Cause for Discipline – General Unprofessional Conduct

4. Pursuant section 2761, subdivision (a), the board may take disciplinary action against a licensee who has committed general unprofessional conduct. By reason of the matters set forth in Factual Findings 3 and 4, it is concluded that respondent committed general unprofessional conduct by committing a battery on his nursing patient. Cause for disciplinary action exists pursuant to section 2761, subdivision (a).

² All subsequent statutory references are to the Business and Professions Code unless otherwise indicated.

Costs

5. Section 125.3 provides that a licensee found to have violated licensing laws may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." As set forth in Finding 6, the board has incurred \$4,647.50 in costs in connection with its investigation and enforcement of this matter. Respondent shall be ordered to reimburse the board for this sum.

6. By reason of the matters set forth in Finding 7, respondent is not ordered to reimburse the board for the sum reflected in the good faith estimate of the Deputy Attorney General. This estimate fails to meet the minimum requirements set forth in California Code of Regulations, title 1, section 1042, to support a determination of actual costs incurred by an agency. Because the reasonableness of these costs cannot be determined, these costs may not be awarded.

Discipline Determination

7. As set forth in Finding 4, the specific conduct alleged to have been committed by respondent while employed as Alameda County Health Services was not established by competent evidence. Because the only evidence of misconduct was based on hearsay statements of the alleged victims, which were not corroborative of any direct evidence of misconduct, the Administrative Procedure Act prohibits the board from relying on the alleged misconduct in making its discipline determination. (Gov. Code, § 11513, subd. (a).)

8. The purpose of this proceeding is not to further punish respondent for his criminal conduct but to protect the public. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 73, fn. 6.) Indeed, the protection of the public is the board's highest priority when exercising its disciplinary functions. (§ 2708.1.) For that reason, whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public "shall be paramount." (*Ibid.*)

9. The board has developed disciplinary guidelines to be utilized in evaluating violations of the Nursing Practice Act. The recommended discipline for a licensee who has been convicted of an offense substantially related to the qualifications, functions or duties of a registered nurse is license revocation.

In California Code of Regulations, title 16, section 1445, subdivision (b), the board has set forth its criteria for determining the rehabilitation of a licensee who has been convicted of a criminal offense. The relevant criteria to this matter are: the nature and severity of the offenses; the total criminal record; the time that has elapsed since the commission of the offense; compliance with terms of probation or other sanctions imposed against the licensee; and evidence of rehabilitation submitted by licensee. Respondent bears the burden of demonstrating sufficient rehabilitation so that his continued licensure could be found consistent with the public safety.

Respondent committed an assaultive offense against a patient while on duty as a registered nurse. The superior court deemed the offense so serious that it ordered that respondent may not practice nursing and may not volunteer his services in any health facility during the three-year probationary period. The offense is recent, and respondent remains on probation for the offense. Respondent presented no evidence in mitigation, and by his testimony, demonstrated no insight into his criminal conduct. Respondent presented little evidence of rehabilitation other than his compliance with the terms of his criminal probation. The hallmark of rehabilitation is a change in attitude from that which existed at the time of the offense. Respondent provided no evidence that would instill any confidence that his behavior would be different in the future. On such a record, it would be inappropriate to deviate from the board's disciplinary guidelines. License revocation is both appropriate and consistent with the protection of the public.

ORDER

Registered nurse license number 516388 issued to respondent, Rainiel Josh Robbins, also known as Raniel Robbins and Tomas Cosme, is revoked. If and when respondent's license is reinstated, he shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$4,647.50. Respondent shall be permitted to pay these costs in a payment plan approved by the board. The board may reduce this amount upon reinstatement of the license.

DATED: June 8, 2012



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2012-262**

11 **RAINIEL JOSH ROBBINS**
12 **AKA RANIEL ROBBINS**
13 **AKA TOMAS COSME**
14 **15959 East 14th Street Space 1**
San Leandro, California 94578

ACCUSATION

15 **Registered Nurse License No. 516388**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about October 3, 1995, the Board of Registered Nursing issued Registered
23 Nurse License Number 516388 to Tomas Cosme, whose name was subsequently changed to, and
24 the License issued in the name of, Rainiel Josh Robbins (Respondent). On or about December 2,
25 2009, in the criminal case *People v. Rainiel Robbins aka Raniel Robbins*, Case No. 233472 in
26 Alameda County Superior Court, an Order was entered modifying Respondent's bail to prohibit
27 practice as a registered nurse, and requiring surrender of the License, pending the criminal case.
28 On or about May 23, 2011, as part of a Conditional Release Order by the Superior Court in Case

1 No. 233472, Respondent was prohibited from practicing as a nurse during the three year period of
2 conditional release. On or about May 31, 2011, the License expired and has not been renewed.

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4 JURISDICTION

5 3. This Accusation is brought before the Board of Registered Nursing (Board),
6 Department of Consumer Affairs, under the authority of the following laws. All section
7 references are to the Business and Professions Code (Code) unless otherwise indicated.

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9 STATUTORY PROVISIONS

10 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
11 any licensee, including a licensee holding a temporary or an inactive license, for any reason
12 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

13 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
14 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
15 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
16 Code, the Board may renew an expired license at any time within eight years after its expiration.

17 6. Section 2761 of the Code states:

18 "The board may take disciplinary action against a certified or licensed nurse or deny an
19 application for a certificate or license for any of the following:

20 "(a) Unprofessional conduct . . .

21 . . .

22 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
23 functions, and duties of a registered nurse, in which event the record of the conviction shall be
24 conclusive evidence thereof.

25 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
26 revoke a license on the ground that the licensee has been convicted of a crime substantially
27 related to the qualifications, functions, or duties of the license.

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1 8. California Code of Regulations, title 16, section 1444, states in pertinent part:
2 "A conviction or act shall be considered to be substantially related to the qualifications,
3 functions or duties of a registered nurse if to a substantial degree it evidences the present or
4 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
5 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

6 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
7 subdivision (d) of Penal Code Section 11160."

8 9. Penal Code section 11160, subdivision (d), states in pertinent part:

9 "For the purposes of this section, 'assaultive or abusive conduct' shall include any of the
10 following offenses:

11 "(8) Battery, in violation of Section 242."

12 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation of the licensing
14 act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case:

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction of Substantially Related Crime)

18 11. Respondent is subject to disciplinary action under section(s) 2761(f) and/or 490 of the
19 Code, by reference to California Code of Regulations, title 16, section 1444, for conviction of a
20 crime substantially related to the qualifications, functions or duties of a registered nurse, in that
21 on or about April 15, 2011, in the criminal matter *People v. Rainiel Robbins aka Raniel Robbins*,
22 Case No 233472 in Alameda County Superior Court, Respondent was convicted of violating
23 Penal Code section 242 (Battery), a misdemeanor. The circumstances are as follows:

24 a. On or about April 15, 2009, Respondent was arrested by Fremont (CA) Police
25 following an incident on or about March 27, 2009 during which Respondent, while working in a
26 hospital as a registered nurse, was accused of, under the guise of cleaning a patient, improperly
27 and without consent touching and then fondling or stroking the patient's genitals;

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b. On or about April 17, 2009, Respondent was criminally charged, in *People v. Rainiel Robbins aka Raniel Robbins*, Case No 233472 in Alameda County Superior Court, under (1) Penal Code section 243.4(c) (Sexual Battery, False Professional Purpose), a misdemeanor; and (2) Penal Code section 242 (Battery), a misdemeanor.

c. On or about March 21, 2011, following a jury trial, Respondent was acquitted of the first count and convicted of the second count (Battery), a misdemeanor.

d. On or about May 23, 2011, imposition of sentence was suspended in favor of a period of conditional release of three (3) years, on terms and conditions including sixty (60) days in county jail (2 days CTS), a prohibition on practicing as a nurse or volunteering in any care or medical facility during the three (3) years of probation, and fines and fees.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

12. Respondent is subject to disciplinary action under section(s) 2761(a), for commission of unprofessional conduct, in that the conduct described in paragraph 11 constitutes same.

DISCIPLINE CONSIDERATIONS

13. To determine the appropriate level of discipline, if any, to be imposed on Respondent, Complainant further alleges that in or about December 1998, while Respondent was employed as a nurse on a per diem basis by Alameda County Health Services, Juvenile Justice Health Services, in Alameda County Juvenile Hall, Respondent performed Intake Health Screening interviews and examinations on incoming juveniles. On at least two (2), up to as many as eight (8), occasions in or about December 1998, Respondent touched, fondled, stroked, or otherwise inappropriately contacted the genitals of the juveniles, while falsely claiming that the contact was necessary for purposes of the Intake Health Screening examination, and/or for a necessary "hernia check."

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 516388, issued to Rainiel Josh Robbins aka Tomas Cosme (Respondent);

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as is deemed necessary and proper.

DATED: October 27, 2011 Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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